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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CHRISTOPHER MILLER

on Habeas Corpus.

G032542

(Super. Ct. Nos. 99SF0643 &  
02CF2547)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a late notice of appeal. Writ granted.

Patrick E. DuNah for Petitioner.

Bill Lockyer, Attorney General, and Gary W. Schons, Assistant Attorney General, for Respondent.

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THE COURT:\*

Christopher Miller seeks relief from the failure to file a timely notice of appeal. The petition is granted.

Christopher Miller was represented by attorney Dave Dziejowski and charged with a variety of offenses in case number 99SF0643. While released on bail, Miller was arrested for new offenses and represented by attorney James Brott in case number 02CF2547. Counsel in both cases mutually negotiated a disposition resolving both cases where Miller pleaded guilty to four of the five counts on case number 99SF0643 and all five counts in case number 02CF2547.

According to Dziejowski, Miller contacted him after the plea and requested that Dziejowski file a notice of appeal on his behalf. Dziejowski filed a notice of appeal and listed case number 99SF0643 on the appeal. According to Dziejowski, he was aware of a “potential appellate issue,” on case number 02CF2547, but “due to inadvertence,” he neglected to include case number 02CF2547 on the notice of appeal.

The Attorney General does not oppose Miller’s request for relief to file a late notice of appeal.

The principle of constructive filing of the notice of appeal should be applied in situations where counsel advises a criminal defendant that he will file a notice of appeal on his behalf and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney has a duty to file a proper notice of appeal, or tell the client how to file it himself. In this case, counsel advised Miller that he would file a notice of appeal but inadvertently neglected to include all case numbers which were considered in the disposition. Miller’s reliance on counsel’s promise to file a proper notice of appeal which accurately reflected the entire disposition entitles him to the relief requested.

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\* Before Sills, P. J., Rylaarsdam, J., and Fybel, J.

The petition is granted. On petitioner's behalf, and in compliance with California Rules of Court, rule 31(d), attorney Patrick DuNah is directed to prepare and file an amended notice of appeal to include Orange County case number 02CF2547. The Clerk of the Superior Court is directed to accept the amended notice for filing if presented within 20 days of this opinion becoming final. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.